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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/826,498 04/04/01 BRANDT

L J6497 (C)

000201
UNILEVER
PATENT DEPARTMENT
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HM22/0815

EXAMINER

BERMAN, A	
ART UNIT	PAPER NUMBER

1619

DATE MAILED:

08/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary	Application No. 09/826,498	Applicant(s) BRANDT ET AL.	
	Examiner Alysia Berman	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt is acknowledged of the preliminary amendment filed July 2, 2001. Claims 1-13 have been canceled. Claims 14-17 have been added and are pending.

Specification

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 16-19 have been renumbered 14-17.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claims 14-17 are indefinite because they claim a hair styling polymer but appear to be directed to a composition. Clarification is requested.
7. Claims 14-17 are vague and indefinite because claim 1 recites vinyl-based and acrylic-based polymers. The terms vinyl-based and acrylic-based are not art-recognized and are not exclusively defined by the claims or the specification. It is unclear what is encompassed by vinyl-based polymers and acrylic-based polymers. The metes and bounds of the claim cannot be determined.
8. Claims 14 and 17 are indefinite because claim 1 recites a range of "1.0:01" in line 10. Is Applicants' intent to claim 1.0:0.1 or 1.0:1?
9. Claim 17 is vague and indefinite because it depends from a canceled claim. The metes and bounds of the claim cannot be determined.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,151,269 (269)

US '269 discloses a hair styling composition that comprises about 30-70 wt.% of an alcohol such as ethanol or isopropanol (col. 3, lines 52-66). The composition may also comprise about 0.1-2 wt.% hydroxyethylcellulose (col. 4, lines 16-19) and 0.1-2 wt.% of pyrrolidone-vinyl alcohol copolymer (col. 4, lines 24-27). The amounts of the components encompasses the instantly claimed ranges. The "Method of Hair Setting" disclosed at column 7, lines 39-44 teaches contacting hair with the composition and shaping the hair at an angle of 90° with a hair dryer. It is conventional to comb hair after blow-drying in order to achieve a particular style. Therefore, the step of combing the hair into a desired style of claim 17 is not considered critical to the invention.

Double Patenting

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 14-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 09/275,149. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because both applications are directed to hair styling compositions a holding polymer, a saccharide and a carrier. The difference is that the instant application is directed to particular species of holding polymer, saccharide and carrier that are encompassed by the claims of Application No. 09/275,149. Application No. 09/275,149 discloses and claims the species claimed in the instant application. It is within the skill in the art to select a particular species within a disclosed genus and expect similar results. One skilled in the art would have been motivated to select the species of holding polymer, saccharide and carrier of the instant application in the composition of Application No. 09/275,149 expecting to obtain good hair style retention and a smooth, natural feel to treated hair.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

14. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection. Claims 1-13 have been canceled. Therefore, the arguments with respect to these claims are moot.


Correspondence


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alysia Berman whose telephone number is 703-308-

4638. The examiner can normally be reached on Monday through Friday from 8:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 or 703-305-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234 or 703-308-1235.


Alysia Berman
Patent Examiner
August 3, 2001


DIANA DUDASH
SUPERVISORY PATENT EXAMINER
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